IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR
S.B. Civil Writ Petition No.3197/07
Ram Nath & Ors. Vs. Chhotu & Ors.

2.5.2007

Hon'ble Mr. Justice Mohammad Rafiq

Shri R.Kishan Daga for petitioners.

Heard learned counsel for the petitioners.

The petitioners who are the plaintiffs before the trial court have challenged the order dated 15.2.2007 whereby his application seeking amendment of the plaint has been rejected.

Learned counsel for the petitioners argued that the trial court committed an error of law in rejecting the application as the desired amendments would change the nature of the suit. It

was argued that the plaintiffs had filed the original suit for cancellation of sale deed as the seller had received the disputed property in gift pursuant to an illegal gift deed which was not in the knowledge of the plaintiffs. He came to know about this when the gift deed was exhibited at the time of evidence and cross examination was done. It was therefore that the application seeking amendment of the plaint has been made. In the application for amendment, it was specifically stated that the petitioners do not want to led any evidence on this point and the matter may be heard finally, but the application was however illegally dismissed. It was submitted that the amendments even if allowed at the stage of final disposal, it may not

alter the nature of the dispute because the cause of action would still remain the same. It was therefore prayed that the impugned order be set aside.

Having heard the learned counsel for the petitioners and perused the impugned order, I find that the learned trial court noted that the application seeking amendment in the plaint was made when the suit was at the final stage of hearing and the trial was at the conclusion. The pleas set up by plaintiffs that they came to know about the gift deed only from the cross examination of the witnesses in 2005 was not accepted particularly because the defendants in their temporary injunction application submitted on 28.8.01 had made categorical reference to the aforesaid

gift deed and thereafter the gift deed was also mentioned in the reply to temporary injunction application submitted by defendant no.6 on 16.1.2004 and the rejoinder which was also submitted on 16.1.2004. In fact issue no.6 which was framed on 12.4.04 also pertained to gift deed. The cross examination of PW-1 Ramnath was made on 13.10.2004 in which also number of questions were asked about the gift deed. Similarly PW-2, Damodar cross examined on 28.10.2004, PW-3 Panchu Ram cross examined on 17.1.05 and PW-4 Prabhati cross examined on 16.2.2005 were also asked number of queries with regard to the gift deed by the plaintiffs. The trial court therefore did not find the application filed as late as on 26.8.05

as bona fide which according to it was intended to further delay the proceedings and if allowed at this stage would have definitely changed the nature of the suit because the suit was confined to declaring the sale deed void and illegal whereas the gift deed was a different document which would have changed its nature.

I do not find any such legal infirmity in the order passed by learned trial court which may warrant interference by this Court.

The writ petition stands dismissed.

(Mohammad Rafiq),J.

Rs/-